

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT No. 276-65-0875  
Issued to: Mark G. CAVANAUGH

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2424

Mark G. CAVANAUGH

This appeal has been taken in accordance with 46 U. S. C. 7702 and 46 CFR 5.30-1.

By order dated 31 January 1985, an Administrative Law Judge of the United States Coast Guard at Alameda, California, revoked Appellant's seaman's document upon finding proved a charge of misconduct and a charge of being a user of a dangerous drug. The specifications supporting these two charges allege that Appellant, while serving under authority of the captioned document on board the SS CONSTITUTION did, on or about 1900 24 February 1984 while said vessel was at sea, wrongfully use cocaine and at the same time and place, being holder of the captioned document, was a user of and did use cocaine.

The hearing was held at Honolulu, Hawaii, on 10, 23 and 24 March 1984.

At the hearing Appellant was represented by professional counsel and entered a plea of not guilty to the charges and specifications.

The Investigating Officer introduced in evidence four exhibits and the testimony of five witnesses.

In defense, Appellant introduced in evidence two exhibits, his own testimony, and the testimony of four additional witnesses.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charges and specifications had been proved, and entered a written order revoking Appellant's Merchant Mariner's Document and all other licenses, certificates, and/or documents issued to Appellant.

The complete Decision and Order was served on 30 March 1985. Appeal was timely filed on 22 April 1985 and perfected on 3 September 1985.

FINDINGS OF FACT

At all relevant times on 24 February 1984, Appellant was serving as Ordinary Seaman (Night Painter) aboard the SS CONSTITUTION under the authority of his Merchant Mariner's Document. The CONSTITUTION is a United States flag passenger vessel which is operated as an inter-island cruise ship calling at various ports in the State of Hawaii.

At about 1900 on 24 February 1984, Chester Artis, another crewmember, visited Appellant in Appellant's room. The conversation turned to cocaine. Appellant told Artis he knew where to purchase some cocaine. Appellant, Artis and Appellant's roommate departed Appellant's room and went to the cabin of a wine steward aboard the CONSTITUTION to make the purchase.

After the purchase had been made, the three returned to Appellant's quarters. Appellant's roommate departed, and Appellant and Artis used the cocaine by dissolving it in water and injecting it into their arms.

#### BASIS OF APPEAL

Appellant challenges the Administrative Law Judge's evaluation of witness credibility.

APPEARANCE: Appellant, pro se.

#### OPINION

Appellant challenges the Administrative Law Judge's determination that the testimony of Artis, the primary Coast Guard witness, was believable. This argument is without merit.

At the hearing, Artis testified that he had seen Appellant inject cocaine into his arm. (T-124, 125.) Appellant testified that he had not used cocaine with Artis. (T-533.) The Administrative Law Judge determined that "Artis' testimony is accepted as the more plausible story. . . ." (Decision and Order at 18). Where, as here, the testimony is in direct conflict "[i]t is the function of the Administrative Law Judge to evaluate the credibility of witnesses and resolve inconsistencies in the evidence. Appeal Decisions 2340 (JAFFEE), 2333 (AYALA), 2302 (FRAPPIER) and 2116 (BAGGETT)." Appeal decision 2386 (LOUVIERE).

During the course of the hearing, the Administrative Law Judge ordered Appellant to submit to a physical examination. Appellant complied with this order, and underwent a physical examination by a Honolulu physician on 12 March 1984. The physician's report of this examination (Exhibit 15) states, in part, "I have no substantial evidence of the use of cocaine in this man within the

last seven days. This does not exclude the use of cocaine prior to this...." Appellant argues that Artis's testimony should not be believed because it is in "direct conflict" with the medical report. However, the examination was made sixteen days after the alleged use of the cocaine, and I find no error in the Administrative Law Judge's resolution of the matter. The Administrative Law Judge's duty is to evaluate the evidence presented at the hearing. The findings need not be consistent with all evidentiary material contained in the record so long as sufficient material exists in the record to justify such a finding. Appeal Decisions 2282 (LITTLEFIELD) and 2395 (LAMBERT).

There has been no showing here that the Administrative Law Judge's determination of what events occurred was either arbitrary and capricious or inherently incredible. Accordingly, I will not disturb it on appeal.

#### CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the Decision and Order of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

#### ORDER

The decision of the Administrative Law Judge dated at Honolulu, Hawaii, on 31 January 1985 is AFFIRMED.

J. C. IRWIN  
Vice Admiral, U. S. Coast Guard  
ACTING COMMANDANT

Signed at Washington, D. C. this 6th day of JUNE, 1986.